IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.299 of 2007
In
Criminal Writ Petition No.1599 of 2007

Triumph International Finance India Ltd. and ors. — Applicants
Vs.
European Investments Ltd.& anr. — Respondents

Mr.Nitin Pradhan i/b. Mr.Sanjog S. Parab for applicants.

Mr.S.V.Marwadi for resp.no.1.

Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.
October 4, 2007.

P.C.

1. Heard Mr.Pradhan with Mr.Parab, the learned counsel for the applicants who were impleaded as respondents in Criminal Writ Petition No.1599 of 2007 and the said petition has been disposed by this Court on 28/8/2007 by directing the expeditious trial in C.C.No.2102/S/2002 (new registration No.1438/SS/2007) pending before the learned Addl. Chief Metropolitan Magistrate, 33rd Court at Ballard Pier, Mumbai and it was further directed to decide the case preferably by 31st December 2007. This application prays for recall of the order dated 28/8/2007 passed in Criminal Writ Petition No.1599 of 2007.

2. Mr.Pradhan has advanced his arguments on the following main grounds:

(a) all the facts were not brought before this Court and more particularly the order passed by a Division Bench of this Court in Notice of Motion No. 2289 of 2004 in Appeal No.496 of 2004 on 20/7/2005 and the fact that as per the said order the accused - present applicants are paying the monthly instalment of Rs.1 Crore to M/s. European Investments Ltd. without any default;

(b) out of the total amount of Rs.71 crores arising from the dishonoured cheques, an amount of Rs.58 crores has already been repaid to the complainants i.e. M/s. European Investments Ltd. and what is remaining is only a sum of Rs.13 crores to be repaid; and

(c) the trial of the pending complaint has been delayed for the reasons mainly attributable to the complainants and if the directions issued by this Court are to be

followed, some prejudice is likely to be caused to the interest of the present applicants.

3. At the first instance, an application for review even against an ex-parte order finally deciding the petition cannot be entertained in view of the provisions of Section 362 of Cr.P.C. Secondly the payments being made as of now by the present applicants pursuant to the order passed by this Court on 20/7/2005 is a matter of evidence which could be placed before the trial Court by the accused and it cannot be said that the trial Court will not appreciate such an evidence so as to indicate that the total amount of the dishonoured cheques has been partly paid or substantially paid and ultimately such evidence will have to be considered by the trial Court while passing the final order directing payment of compensation / fine. Thirdly, the order dated 28/8/2007 should not cause prejudice to any of the parties in asmuchas it is an order under Section 483 of Cr.P.C. and in case for any reasons the trial Court finds that the trial cannot be completed by 31st December 2007, it can approach this Court for extension of time as is well known.

4. What is important to be considered is Mr. Pradhan's grievance regarding certain unfounded allegations made in Criminal Writ Petition No.1599 of 2007. For illustration, Mr.Pradhan referred to the allegations in ground F of the petition reading as under:

> "...However, on account of dishonest and dilatory tactics employed by the Respondent No.2 to 8, the trial of above case is being delayed on one pretext or the other to create frustration in the mind of Petitioner."

5. Undoubtedly, the trial Court will have to decide the case on its own merits and without being influenced by any such allegations or aspersions which may find place in the petition memo in Criminal Writ Petition No.1599 of 2007. It is made clear that the trial Court will not be influenced by any such allegations and the case will be decided as per the parameters laid down under Section 138 onwards of the Negotiable Instruments Act, 1881. At the same time, the trial Court will also not be relieved of its powers by the order dated 28/8/2007 regarding

compounding under Section 147 of the N.I. Act. If it is demonstrated that the entire amount as may be due to the complainant has been repaid, certainly the trial Court will consider the prayer for compounding the offence under Section 147 of the N.I. Act on its own merits.

6. The application is disposed off accordingly.

(B.H.MARL